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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ORIGINAL

29
7/30/

JOHN RICHARD JAE,
Plaintiff,

CIVIL No. 00-2001

vs.

Judge Rambo
Magistrate Judge

SUPERINTENDENT DRAGONICH et al.,
Defendants

FILED
HARRISBURG

JUL 27 2001

MARY E. GYNORE, CLERK
Deputy Clerk

PETITION FOR WRIT OF MANDAMUS AND BRIEF IN SUPPORT

COMES NOW the Plaintiff and Pro Se Counsel in the above-
civil action, John Richard Jae, a Layman Unlettered in the Arts & Sciences of
Law & legal procedures within the United States & now files his Petition for Writ of
Mandamus & Brief in Support pursuant to 28 U.S.C. § 1651, herein, & who avers, & so testifies
I - THE PETITIONER

1. On December 7, 2000, the Plaintiff commenced this 42 U.S.C. § 1983 Civil Rights Action by filing a complaint. On February 1, 2001, the Plaintiff filed an Amended Complaint.

2. On March 6, 2001, the Defendants, by counsel, filed a Motion to Dismiss the Complaint. Defendants' Brief in Support of Motion to Dismiss was filed on March 20, 2001.

3. On May 31, 2001, Plaintiff John Richard Jae filed his Brief in opposition to Defendants' Motion to Dismiss the Complaint.

4. On June 22, 2001, Defendants by counsel, filed their Reply Brief.

5. on July 11, 2001, U.S. Magistrate Judge Andrews filed his Report And Recommendation, thus recommending therein that Defendants' Motion To Dismiss be granted.

6. Plaintiff John Richard Jae now moves this Court for a
 6. THIS IS the Plaintiff's
 Requiring SCIT-Greene Prison officials to Return to Plaintiff All of his Legal Materials, Court Case Files/Papers And own Personal Law Books And to Provide him with Enough Carbon Paper And Envelopes to Enable him to Prepare And File his written objections to the US Magistrate Judge's Report And Recommendation of July 11, 2001, herein this case, by & through here Petition For writ of mandamus And Brief in Support of the following facts, arguments & Citations of Authorities below

II. BRIEF IN SUPPORT

Plaintiff John Richard Jae avers & submits that on June 17, 2001, he sent a written Request Form to his SCIT-Greene Unit Manager Ken Miller, complaining about, inter alia, the fact that he has not been to his Stuffed Property exchange legal & religious materials for over 30 days, June 17, 2001, because the 2-10 shift ^{SMU} Inmate Pops w. Inmate Property here are not following and are violating DC-ADM. #801. VI. M. 5.9 which states an Inmate shall have access to his property once every 30

Mr. Miller failed to do anything at all to correct remedy this here Policy violation, although he was legally required to do so.

Furthermore, Prison Officials here at SAT-Green illegally deny this Plaintiff, who is an indigent inmate, sufficient + enough free paper and can paper to prepare his legal/court pleadings in 12 active State and Federal court cases, in particular, to prepare his written objections to the Magistrate Judge's Report And Recommendation of July 2000, herein this instant case, and large Manila envelopes which this Plaintiff needs to mail written objections to this Court and to defense counsel.

Be cause the SMU officers refuse to allow this Plaintiff to go to his stored property to get out & take back his cell with him his Court case file/papers in this case and his own Personal Law Books ^{because SAT-Green} which he needs ^{Prison officials are denying him sufficient enough paper & envelopes which} enable him to prepare said written objections and enough large Manila legal envelopes to mail such to this Court to defense counsel, they are denying him access to courts in violation of the 1st & 14th Amendments of U.S. Constitution & of Article 1, §20 of the Pa. State Const. and they are also frustrating the proper administration and they are failing in their legal duty to assist this Prison Plaintiff in the preparation & filing of meaningful legal papers with the courts. See = *Bands v. Smith*, 430 U.S. 817, 825 S.Ct. 1491, 1498 (1977).

In *Peterkin v. Jeffes*, 855 F.2d 1021 (3d Cir. 1988) 8th Cir.

Circuit U.S. Court of Appeals Reasoned that

An actual injury necessarily occurs by virtue of a prison's failure to provide the level of assistance required under Bands.

and herein the instant case the prison has failed to provide the level of assistance required under Bands as in this pending.

Furthermore, this Plaintiff avers & argues that, a deprivation of a prisoner's legal papers violates the Constitution. See: Brownlee v. Canine, 957 F.2d 35 (7th Cir. 1992); Roman v. Jeffes, 904 F.2d 192, 198 (3d Cir. 1990); McJames, 810 F.2d 344, 347 (2d Cir. 1987); Simmons v. Dickinson, 804 F.2d 183-85 (1st Cir. 1986); Wright v. Neugebauer, 795 F.2d 967, 968 (1986); Patterson v. Mintzes, 717 F.2d 284, 288 (6th Cir. 1983); Tyler v. S97 F.2d 643, 644 (8th Cir. 1979); Hall v. Sutton, 755 F.2d 787 (11th Cir. 1985); Zirich v. Lucht, 981 F.2d 694 (3d Cir. 1992); Sowell v. Kase, 941 F.2d 32, 34-35 (1st Cir. 1991); Williams v. Committee, 812 F.Supp. 1029, 1032-33 (N.D. Cal. 1992); Galipeau v. Berard, 734 F.Supp. 48, 53 (D.R.I. 1990); Balaban, 606 F.Supp. 176, 183-84 (S.D.N.Y. 1985); Sire v. Borden, 526 F.Supp. 1264, 1265 (N.D. W. Va. 1981); Stringer v. Thomas, 537 F.Supp. 133, 137 (N.D. Ill. 1988); and McCarter v. Hutto, 1028 (4th Cir. 1986). The U.S. Court of Appeals for the Fourth Circuit

held:

He has asserted that prison officials confiscated and/or destroyed his legal materials some of which were irreplaceable, thus infringing or rendering nugatory his constitutional right of access to the courts. Bands v. Smith, 436 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977) (State's failure to provide legal research facilities denies inmates access to the courts in violation of the fourteenth amendment). Hudspeth v. Higgins, 584 F.2d at 1337-8 (alleging that correctional authorities threatened prisoner with physical

harm to deter him from seeking judicial relief states cognizable claim under § 1983. Oxendine & Williams, 509 F.2d 1405, 1407 (4th Cir. 1975) (confiscation of legal materials from prisoners constitute unreasonable interference with access to the courts. Were courts to succeed in proving these allegations, their entitlement to same remedy would be beyond dispute. (confer 781 F.2d at 1032).

Furthermore, in *Tyler v. "Ran" Deputy Sheriff*, 574 F.2d 427, 429 (8th Cir. 1978), the U.S. Court of Appeals for the Eighth Circuit, stated the taking of a prisoner's legal papers states a claim under 42 U.S.C. § 1983 or 1985 if the taking results in interference with or infringement of the prisoner's constitutional right of access to the courts. *Stogrus v. BROWN*, 416 F.2d 105 (7th Cir. 1969). (*Tyler*, 574 F.2d at 429).

Furthermore, in *Patterson v. Mitchell*, 717 F.2d 284 (1983), the U.S. Court of Appeals for the Sixth Circuit, stated:

As has been summarized:

"[P]ersons in prison like other individuals have the right to petition the government for redress of grievances which of course includes access of prisoners to the courts for purpose of presenting their complaints." *Cocke v. Beta*, 405 U.S. 314, 321, 92 S.Ct. 1079, 1081, 31 L.Ed. 2d 263 (1972), quoting *Johnson v. Avery*, 293 U.S. 483, 485, 89 S.Ct. 717, 718, 1 L.Ed. 2d 78 (1941). *Milhouse v. Carlson*, 652 F.2d 371, 373 (3d Cir. 1981). Prison officials are charged with the responsibility of assuring that inmates access to the courts is adequate, effective and meaningful. *Burns v. Ohio*, 360 U.S. 252, 79 S.Ct. 1101, 36 L.Ed. 2d 1209 (1959); *Smith v. Bennett*, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed. 2d 39 (1961). A prisoner's First Amendment guarantees in use of freely exercisable without hindrance. *Milhouse* supra, 652 F.2d at 377, referencing *Ferranti v. Moran*, 618 F.2d 888, 891-92 (1st Cir. 1980); *Garland v. Boley*, 594 F.2d 1024, 1025-23 (8th Cir. 1979); *Hudspeth v. Frogtis*, 584 F.2d 1351, 1357 (4th Cir. 1978), cert. denied, 441 U.S. 913, 99 S.Ct. 2013, 60 L.Ed. 2d 386 (1979). (*Patterson*, 717 F.2d at 288).

See also *Hiney v. Wilson*, 520 F.2d 589, 591 (2d Cir. 1975) and *Reynolds v. United States*, 517 F.2d 1311, 1320 (7th Cir. 1975).

Furthermore, Plaintiff avers & submits that, Prison officials cannot deny a prisoner his legal research, scientific or otherwise. Holding Prison in an area beyond prisoner control violates the case's integrity. Official reluctance to supply sufficient cell storage space is no excuse to abridge rights.

The American Correctional Association (ACA) Standard SS 3-426 to the courts grants, " . . . the right of access to the courts minimally penitentiaries have the right to present any issue, including the following: Challenge the legality of their conviction or confinement; seeking redress for illegal conduct or treatment while under correctional control; pursuing remedies in connection with civil legal problems; and asserting against correctional or other governmental authority any other right protected by constitutional or provisions of common law. Inmates seeking judicial relief are not subject to penalties because of the decision to seek relief."

Court access enters the picture through the First Amendment which denies the ability to have the materials necessary to comprehend the evidence and reports of one's criminal conviction. Transcripts and evidence are not generic, but specific to each conviction. Errors in one case appear in the next. Thus, prison officials cannot deny an inmate legal research, scientific or otherwise, when the inmate's only chance is "in the books" through the courts.

In *Bainbridge*, supra, 917 S.Ct., at 1196, the U.S. Supreme Court has reiterated our decisions have consistently required states should affirmatively obligations to assure all prisoners meaningful access to the courts. It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with notary services to authenticate them, and with stamps to post them.

Plaintiff also reminds this court of what the U.S. District Court held in her October 6, 2000 order in *The U.S. Long, et al., v. C. 12-CR-00-001*, and in *The U.S. Lasky*, CIVIL No. 12-CR-00-181, which the court has denied.

(3d CIR 1981) •

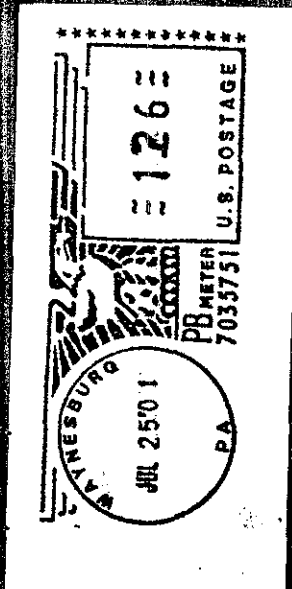
(W) HEREOF, based upon the foregoing facts, arguments & citations of authorities, herein, Plaintiff John Richard Doe, asks that this Court will enter an order, ordering, that this request be granted, and, directing SCT-Greene prison officials to forth with all of his legal materials, court case files/papers and his own law books to this Plaintiff here, and that they are to provide Plaintiff with one (1) Legal Pack (50 sheets of paper and 5 of carbon paper) and two (2) Large Manila Legal Envelopes immediately.

IT IS FURTHER ORDERED, that the Clerk of this Court shall forward a copy of this Court's order, granting, this to the Superintendent, SCT-Greene, 169 Progress Drive Waynesburg, PA-15370, at the same time as the Clerk sends the order out to the parties, herein this case:

AND HE SHALL EVER BE
RESPECTFULLY SUBMITTING

(S) — John Richard Doe
MR. JOHN RICHARD
#AQ-32A
SCT-Greene/SMU
175 Progress Drive
Waynesburg, PA-15370
at Prison and Prisoners

Dated: 22nd JULY 2001:



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